

IN CRIME'S ARCHIVE

The cultural afterlife of criminal evidence

KATHERINE BIBER

Introduction

This article examines the cultural afterlife of criminal evidence. During the criminal trial, evidence is adduced by the prosecution in order to narrate and prove the facts supporting the charges. Strict rules govern the collection, admission and interpretation of evidence at trial, and where evidence has been improperly obtained, or where it may be irrelevant or unreliable, or if is misleading, confusing or unfair, the evidence may be excluded. However, after the conclusion of the trial, this material returns to a notional 'archive' and sometimes continues to proliferate culturally, but subject to no rules nor standards. This article examines some instances in which criminal evidence has been accessed and used post-trial, and asks whether these cultural practices constitute risk or opportunity, or something more benign. Crime's archive has aroused the interest of artists, publishers, scholars, curators and journalists who have accessed it by various methods, and used it for a wide range of purposes, some of which might be transgressive, dangerous or insensitive. This article explores what is at stake in accessing crime's archive and prolonging the cultural afterlife of criminal evidence. It responds, in part, to Eamonn Carrabine's call for a 'critically engaged visual criminology' (2012: 487). For Carrabine, criminology's 'cultural turn' has made scholars more attentive to the transformation of 'traumatic experiences into visual art'

(2012: 486), and he proposes an ethical framework for asking questions about representation. This article argues that we might begin this critical engagement by inaugurating a *jurisprudence of sensitivity*, where ‘sensitivity’ is a concept recognised by law as justifying limits upon representation or disclosure. Once probative value has lapsed, and cultural value is ascribed to some items of criminal evidence, this article shows how a ‘sensitive jurisprudence’ might make us attentive to the potential harm done by retrieving this material from crime’s archive.

Central to this article is the question: What can be done in crime’s archive? Public records and legal process are presumptively open and transparent, but material therein might be private, personal, sensitive or humiliating. Archive laws and practices recognise the concepts of ‘privacy’, ‘personal information’ and ‘sensitive information’ and use these to guide decisions about access and use. However, these concepts do not anticipate the projects of the archive’s creative users, allowing this material to slip into the cultural sphere. Whilst this article does not argue against the release of criminal archival material, it demands that any release is nevertheless *sensitive* to the consequences that may flow. Part I is a case study, illustrating what I argue is an insensitive cultural use of crime’s archive. Part II shows a wider range of cultural uses of criminal evidence and situates those cultural practices within some contemporary cultural theories and practices relating to ‘archives’. Part III explores ‘open justice’ as a mechanism for opening the legal archive, and explains how open justice has failed to address the practices of cultural users of crime’s archive. Part IV then proposes a ‘jurisprudence of sensitivity’ by surveying how ‘sensitivity’ currently operates as a legal concept within open justice, and then pushes that concept closer towards the possibility

of identifying the harm that is sometimes done when criminal evidence leads a cultural afterlife.

I. Perverting the course of justice

This article opens with a case study with the aim of illustrating one instance in which criminal evidence captures the imagination of both legal and cultural users. Henry Bond's book *Lacan at the Scene* (2009) represents an instance in which photographic evidence taken for a criminal investigative purpose is re-used for a cultural theoretical enterprise. Whereas the original material is already violent, profane, and violates crime's victims, this article argues that Bond's re-use is insensitive, for the way it reifies transgression, and does so without adequate justification. Nevertheless, Bond's endeavour highlights a new range of concepts and questions which, despite a growing cultural hunger for criminal archival materials, have failed to be addressed by the legal institutions which create and preserve these records.

Researching his book *Lacan at the Scene*, Henry Bond visited the British National Archive and sought access to English murder case files between 1955 and 1970. He was looking for files which contained original crime scene photographs. The cases he examined had been 'solved' in the judicial sense – the perpetrators of these homicides had either pleaded guilty or they were convicted following a trial. However, Bond had the idea that the photographs in the files contained further 'clues' which, when subjected to Lacanian readings, would enable him to diagnose the perpetrators as neurotic, psychotic or perverse.

Bond's book opens: 'I begin with a novel and engaging premise: what if Jacques Lacan – the brilliant and eccentric Parisian psychoanalyst - had left his home in the early 1950s in order to travel to England and work as a police detective? How might he have applied his theories in order to solve crimes?' (Bond, 2009: 1) Bond concedes, in his second paragraph, that his research has a 'flippant or comedic starting point' and he describes the process by which he re-photographed the archival images, enabling him to 'reenter' the crime scenes 'capturing my own evidence' (Bond, 2009: 5). Although I am cautious not to present the view that law's use of this evidence is unproblematic, (see Biber, 2007) my purpose here is to show that we ought to remain vigilant against post-legal uses which, in their refusal of law's limits, also refuse all sensitivity towards law's subjects. Bond is fascinated by sexual homicide, and his text is accompanied by many photographs taken from criminal case files, in which the murdered corpses of rape victims are reproduced, usually in full-page images. Of course, these images had already been displayed years earlier, for police investigators, prosecutors, judges and jurors, and that earlier exhibition – albeit with the justification of criminal process – constituted the creation of this archive of violence and violation. However, I argue that Bond's re-use of this archive is without adequate justification; a veneer of psychoanalytic theory loosely disguises his own fascination with (mostly) women who are murdered, (mostly) by their rapists. These images, I argue, and also Bond's analysis of them, are harmful for the manner in which they degrade, shame and sometimes mock these victims of sexual homicide.

Here is an example of one of Bond's investigations, conducted over slightly fewer than three pages, accompanied by three photographs, at the end of which Bond concludes that a homicidal rapist is a pervert: A woman was travelling on a train between Sussex

and Surrey in 1965. A male passenger made a sexual advance towards her – ‘*What about it?*’ – which she declined. He raped and killed her. Bond reproduces two images of the woman’s body on the carriage floor, partially wedged beneath the seat, her clothing in a humiliating state of disarray, her handbag on the seat above her. Bond imagines the ‘quasi-intimacy’ of the train compartment, and speculates that the woman was a ‘seemingly flirtatious stranger’, and provocatively describes this crime as an ‘inversion’ of ‘the romantic notion of the chance encounter with a stranger on a train’ (Bond, 2009: 53). He writes, ‘finally these strangers *did* form a lasting relationship, but only as perpetrator and deceased’ (Bond, 2009: 53).

Bond’s analysis is not interested in rape and murder; it is in the visual representation of these crimes’ *effects* in the crime scene photographs. He notices that, in the photographs, the victim’s ‘skirt [is] pulled up to reveal underwear, stockings, garter, and so on’ (Bond, 2009: 53, 57); the description is gratuitous as the photographs he reproduces spare none of these details. Bond spends the rest of his analysis of this case examining graffiti scratched on the door of the train compartment, reproduced in his third photograph. He describes the graffiti, variously, as ‘obscene/erotic’ (Bond, 2009: 57), as ‘erotic/obscene’ (Bond, 2009: 58), as a depiction of ‘gang rape’ (Bond, 2009: 57), as ‘violent rape’ (Bond, 2009: 58), and as ‘the *residue* of a perverse act’ (emphasis in original) (Bond, 2009: 57). He is interested in the ‘exhibitionistic dimension’ of graffiti, and wants to ‘creat[e] a dialogue’ between the drawing and the murder scene, both of which he describes as ‘depictions’ of a ‘similar fantasy scenario’ (Bond, 2009: 57). Drawing a bizarre analogy with Steven Spielberg’s film *Close Encounters of the Third Kind*, Bond becomes interested in the shift from two-dimensional to three-dimensional representation, writing: ‘It is as if the drawing of a violent rape were

escalated'; for Bond it is the 'escalation' of a 'fantasy' into 'reality' that confirms the diagnosis of the pervert. He speculates: 'Perhaps this erotic/obscene drawing was produced by the murderer while traveling sometime before on a familiar train journey – as if he responded to the graffiti/diagram next to his seat by posing a brusque rhetorical question: "Does not one *perverse* image demand another?"' (emphasis in original) (Bond, 2009: 58).

This concludes Bond's analysis. He moves swiftly on to his next violent sexual homicide 'investigation', accompanied by further abject, humiliating and – frankly – heartbreaking crime scene photographs. Bond's book is not consigned to the 'cult/alternative' genre, as has applied to other books he identifies and which are characterised – just as his book is – by their prurient and possibly perverted fascination with rape and murder (Bond, 2009: 26). His book is published by the MIT Press, in its Short Circuits series, edited and with an enthusiastic Forward by Slavoj Žižek. Žižek's contribution opens: 'The only thing I feel qualified to add to Henry Bond's outstanding book is what I see as its philosophical presupposition: the weird status of the camera's eye' (Bond, 2009: xi). The remainder of Žižek's contribution is about himself and his own preoccupations – Proust, sex gadgets, Soviet silent cinema, Deleuze, Kant – before he concludes: 'what makes [the crime scene photographs] so unsettling is that they record traces of something we cannot really accept as an actual event, or grasp how it could have happened' (Bond, 2009: xv).

In *Lacan at the Scene*, both Bond and Žižek inexplicably, 'cannot really accept' – that these photographs *do* represent 'actual events'; they represent aggravated sexual assaults, intimate-partner homicides, and murders by strangers, almost of all of which are perpetrated upon women. The author, editor and publisher have forgotten that the

reality and gravity of these crimes demands sensitivity, and they have collaborated in displaying the violated corpse of each woman repeatedly, cruelly and without any reflection upon the trauma she has suffered (Bond, 2009: 37-8). The book is, for this reader, a depraved and degrading celebration of sexualised homicide, whose victims are little more than ludic pawns in a Lacan-lite parlour game. Bond's enjoyment of his project – the book's endnotes are crammed with his boundless edification – and its scholarly façade, gives rise to serious questions about whether and where limits might be drawn around the re-use of evidence from sexual trauma. One value of Bond's book is that it has provoked these questions, some of which this article begins to address.

Several of the book's reviewers do not share my concerns: Daniel Hourigan, who noticed that the book was a 'sometimes gruesome read' and that the photographs were 'abject depictions', nevertheless concluded that the images 'always remain objects of a most critical and tasteful engagement' (Hourigan, 2010). Similarly, Owen Hewitson conceded the book's 'disturbing content', but believed 'Bond is careful [...] to be sensitive to his subject matter and to avoid any hint of the callous voyeurism or *noir* pastiche that is a familiar cliché of the detective fiction genre' (Hewitson, 2011: 109-111). Neither reviewer explains how photographs of real rape and murder might be displayed in a 'tasteful' or 'sensitive' mode. Whereas the heft of this volume derives from the truth of these images – they *really are* probative of rape and murder – its reviewers go to some effort to show that these images might be experienced theoretically. Bond himself engages in some meretricious taunting of his readers on this issue. He asks: 'Do you not, gentle reader, feel a little *dirty* as you browse the lurid images? You may also notice that my version of this conscious justification is that I present the photographs as part of a Freud-Lacanian study' (Bond, 2009: 197 footnote

104, emphasis in original). In her review, Margaret Kinsman represses her own revulsion: ‘Although still very hard to look at – they are, quite frankly, gruesome – with the passage of time, these photos have acquired a historical patina that distances one from how they show the events they depict’ (Kinsman, 2010: 116); repressing affect with critique, she then describes Bond’s writing as ‘stimulating, creative and unsettling in an interesting manner. His approach evokes a kind of aesthetic pleasure, which unsettles even as it satisfies’ (Kinsman, 2010: 116). In her review, Viola Brisolin – who briefly raises the charge of Bond’s own voyeurism before acquitting him of it – overstates his scholarly achievements here: ‘Bond’s rigorous method and resolute approach’; his ‘deft ... moves’ and ‘skilful interpretations’. Brisolin refers to the raped and murdered women as ‘*The objects* depicted in these images’ (Brisolin, 2011: 672). Like the book’s other champions, including Žižek, and his dust-jacket patrons, Victor Burgin, Bruce Fink and Dylan Evans, some of the book’s reviewers seem to have been beguiled by Bond just as, for Lacan, the pervert and his audience are drawn into a symbiotic mutuality.

Of course, these women are not now, and never were, *objects*, and their relocation from criminal case files into cultural theory is, for this reader, neither *tasteful* nor *sensitive*. *Lacan at the Scene* takes criminal evidence, initially gathered for the purpose of investigating and prosecuting homicide, and puts it to a gruesome new purpose. Bond repeatedly remarks upon the bewilderment of the archivists he confronted, and his frustration at their attempts to place restrictions upon his requests to access these files, suggesting emphatically that these bureaucratic philistines are impeding his crucial theoretical endeavour. Among those Bond thanks in his ‘Acknowledgements’ is Luc Sante, who probably inaugurated the practice of making coffee-table books out of crime

scene photographs, with his books *Low Life* and *Evidence* (Sante, 1992, 2003). Bond cites several other books in this burgeoning genre (Bond, 2009: 197 footnotes 104, 106), and he explains that his book originated in his Ph.D research in a UK university (Bond, 2009: 203 footnote 53). And so, whilst Bond's project represents for this reader the comprehensive failure of administrative, scholarly and ethical standards to prevent the post-trial mis-use of criminal evidence – nobody stopped him; some cheered from the sidelines – his is not the only work in which criminal evidence has re-appeared in a cultural setting, with troubling consequences. One aim of this article is to highlight the difficulty of distinguishing those re-uses which are mis-uses without some guidance about how one might exercise sensitivity within crime's archive. It also needs repeating that *lawful* uses might, in some accounts, also constitute mis-uses.

II. *Cultural uses of crime's archive*

Bond is just one in a flourishing field of artists and other creative and scholarly practitioners whose work draws upon official records, but who aims to put these materials into fresh, often unanticipated, contexts. Some of this work is shocking, for instance in its graphic displays of sexual violence and homicide (see Biber, 2010), its wilful aggravation of the traumatic circumstances from which it arose, (see Scott Bray, 2011; Biber, 2006a; Biber and Dalton, 2009c; *Anita & Beyond*, 2003; Birmingham, 2012) or for the illicit means by which it was obtained by its creative users (see Biber, 2011c). Some of this work actively interrogates the implicit logics of the archive from which it was recovered (Jones, 1986/2007, *Tearoom*; see Biber and Dalton 2009; Biber, 2011a), or forces new logics to prevail (Justice & Police Museum exhibitions *Crimes of Passion* 2002-2003; *City of Shadows*, 2006; Doyle, 2005, 2009; see Biber 2006b, 2011b; Maley, 2007; Safe, 2011; Crerar, 2012). Some of this work grapples with the

accusations of voyeurism that arise when one looks without permission (Hanrahan, 1999). All of this work transgresses the limits that the law would impose upon access, use and interpretation of evidence. This article acknowledges the shared interests of legal and non-legal users of criminal evidence, but also recognises that there is often a point at which our concerns conflict. It asks whether, where and how some new limits might be drawn to confine or control our mutual fascination with criminal evidence, and our current misunderstanding or refusal of each others' motivations. It proposes a 'jurisprudence of sensitivity' to open this dialogue. It must also be noted that legal and non-legal users are not necessarily separate cohorts; law and culture are always and already interdependent.

Cultural users of criminal evidence give us new concepts for thinking about this material. They may use evidence aesthetically, historically, politically, theoretically; they may see value in abstracting a single moment from an evidentiary narrative and – redacting context and explanation – working with that; they may be looking for evidence of something else – a lost history, everyday habits, even psychoanalytic diagnosis. No longer seeking to resolve facts in issue, cultural users of criminal evidence provoke other responses: affect, arousal, curiosity, nostalgia, pleasure. Furthermore, and which is explored in more detail in the next section, post-trial deployments of criminal evidence create a conflict between existing concepts in the administration of criminal justice, between transparency and secrecy, between the ideals of open justice and the protection of confidences.

The socio-legal discourse of 'open justice' and the cultural-political discourse of 'transparency', have emerged concurrently with a broader cultural sensibility, one that has been called the 'archival turn' (Stoler, 2002: 87, 95), the 'archival impulse' (Foster,

2004), and ‘archive fever’ (Derrida, 1995). Whilst not precisely synonymous, these terms collectively acknowledge the process by which we create a fetish of the stored document and the repository in which it is stored. Institutions holding medical scientific collections, human remains and indigenous cultural heritage have already undergone long processes for the development of guidelines and frameworks for decision-making about access, display and use of their collections. Elsewhere, public archives and collections oscillate between traditional policies of restriction and emerging missions of generosity; as collections move online, a new discursive idiom develops: ‘generous interfaces’, ‘sharing abundantly’, ‘rich content’, ‘show everything’ (Whitelaw, 2011). Courts and legal archives have yet to resolve their processes for permitting post-trial access and use of their records. In the absence of any formal rules, guidelines or legislation permitting access to, and use of, criminal evidence, knowledge about decision-making and actual use of this material is anecdotal and arbitrary.

Within the visual arts through the 20th century, the archive had been the site of repeated return by artists confronting history, historicity, order, linearity, time and bureaucracy. Artists including Christian Boltanski, Joseph Beuys and Gerhard Richter used archival fragments in an attempt to memorialise the past (see, for example, Buchloh, 1999). This archival fascination continued into the 21st century, where manipulation, citation and documentation became widely-practiced artistic techniques. Archival materials formed the basis for transgressively-imagined pasts, as in the work of Tom Sachs (*Giftgas Giftset*, 1998; *Prada Deathcamp*, 1998) and Alan Schechner (*It’s the Real Thing – Self-Portrait at Buchenwald*, 1993), who played with alternate-endings or aesthetic aspects of the Nazi Holocaust (Biber, 2009a), and for which they and other artists were accused of ‘toxic narcissism’ (Schjeldahl, 2002: 87), ‘sheer stupidity’ and were ‘not to be

forgiven' (Kramer, 2002). Some artists riffed on the stark disjuncture between the notoriety of certain crimes and the banality of the criminal evidence produced to prove them: Richard Barnes repeatedly photographed Ted Kaczynski's Montana cabin after it was taken into evidence (*Unabomber*, 1998); Christian Patterson produced a photobook of redneck sentimentality memorialising the 1957-58 murder spree of Charles Starkweather and Caril Ann Fugate (Patterson, 2011); Jamie Wagg enhanced photographs taken from security cameras showing the two-year-old James Bulger being led away to his death by two ten-year-olds, Jon Venables and Robert Thompson (*'History Painting, Shopping Mall 15:42:32, 12/02/93, 1993-4; 'History Painting', Railway Line, 1993-4*), which were heavily criticised by Bulger's family and the exhibition's sponsors (Cusick, 1994; McGrath, 2004). Numerous artists have used the crime scene as a site of creative engagement, re-photographing locations in which homicides occurred in order to produce a new claim upon forensic aesthetics; this is evident in the work of Taryn Simon (*The Innocents*, 2003) or Teresa Margolles (*¿De qué otra cosa podríamos hablar?/What Else Could We Talk About?*, 2009), who made direct interventions into miscarriages of justice (Biber, 2006a; Scott Bray, 2007; Scott Bray, 2009), as well as Angela Strassheim (*Evidence*, 2009), Eva Frapiccini (*Muri di piombo*, 2003-2006)), Deborah Luster (*Tooth for an Eye*, 2010) and Krista Wortendyke (*Killing Season: Chicago*, 2010-2011), each of whom invokes some kind of affective motivation for her 'return' to the crime scene. Ross Gibson and Kate Richards, in their ongoing collaboration, *Life After Wartime* (1998 -), re-present original Australian crime scene photographs in various formats: as interactive database, with musical improvisation, as immersive environment or as algorithmic story-engine, seeing in this material a 'world full of yearning, folly, mendacity and nobility' (Gibson and Richards,

1998). Corinne May Botz, in *The Nutshell Studies of Unexplained Death* (2004), photographed miniature crime scene models constructed in the 1940s and 1950s by Frances Glessner Lee, who had based her models upon actual homicide and death scenes. Whereas Lee's intention behind building her models was to create training tools for detectives, Botz's project functions simultaneously as a tribute to Lee – an experimental criminologist – and a celebration of Lee's meticulous, intricate, obsessively-detailed models (Botz, 2004).

Sven Spieker, author of *The Big Archive: Art from Bureaucracy* (2008), identifies two dominant twentieth-century views of the archive. The first is 'a giant filing cabinet at the center of a reality founded on ordered rationality'; the second is 'a giant paper jam based on the exponential increase in stored data' (Spieker, 2008: 5. See also Schaffner and Winzen, 1998). Okwui Enwezor, curator of *Archive Fever: Uses of the Document in Contemporary Art* (2008), describes 'fascination with the archive, the inimitable madness of the archive, the constant return to it for verification, inspiration, and source' (Enwezor, 2008: 35). Guest editor for *Artlink*'s 'Mining the Archive' issue, Zara Stanhope, referred to 'outsider tactics' in which artists engaged in 'disruptive' engagement with archives, 'mimicking', 'dismantling', 'intervene[ing]', or 'placing themselves on the fringes of the museum' in a relationship that is self-reflexive, critical or ironic, or where archival institutions actively collaborate with artists in this manner, the artistic potential for archival resources is, she concludes, 'boundless and uncontrollable' (Stanhope, 1999: 8-9. See also *Photofile*, 2005 and *Source*, 2012).

For artists, but also for lawyers, journalists, publishers, curators and scholars, the document in the archive has the attributes of authenticity, contemporaneity, and the unique tangibility of a real moment captured in material form. These attributes form the

basis for the strict interpretive limits imposed by the rules of evidence and criminal procedure. These rules, of course, cannot hope to contain the other attributes of the archival document, those that make it so irresistible as the basis for creative work: beauty, violence, surprise, shame, volume, and the promise that it contains an irresistible secret.

III. Open justice and its exceptions

Where criminal evidence leads a cultural afterlife, we find the intersection of two contemporary phenomena: ‘open justice’ and ‘open secrets’. ‘Open justice’ demands transparency about court procedures and access to court information; the term ‘open secrets’ acknowledges that public records sometimes demand tact or sensitivity about the secrets they contain (see Sedgwick, 1993; Biber and Dalton, 2009c; Young, 2011). This delicate balance arises in other legal contexts and is reflected in the need to regard certain disclosures as ‘privileged’ or ‘protected’, and where the benefit or interest in disclosure is weighed against the benefit or interest in restriction. It is a balance that has been criticised in instances where legal proceedings have continued despite some of the evidence been kept ‘secret’ from one of the parties (Biber, 2009b; Kumar, 2011). And it is a balance that was recently attempted, without success, in New South Wales (NSW), in Australia’s first attempt to achieve ‘open justice’ through legislation. Despite unanimous parliamentary support, the Court Information Act 2010 (NSW) (‘the Act’) that attempted to make court records easily and consistently accessible appears unlikely ever to come into force, unless amended (*Court Information Act*, 2010, NSW). The Act and its failure might be regarded as an experiment with regulating crime’s archive. The Act was developed without any consultation with, or recognition of, cultural or creative users of court information. Nor did it acknowledge the undiminished fervour, within the

humanities and creative arts, for treating official records as ‘open secrets’. These archives, including a very significant amount of legal evidence used in criminal trials, provide a rich basis for creative and scholarly enterprises, and this work has, to date, flourished without any consistent decision-making about access to, or restrictions upon, court information (Biber, 2011a). Further, in the absence of coherent legal or administrative responses to these practices, a confusing range of property rights have been assumed by creative users of archival or ‘found’ or ‘readymade’ objects; copyright, moral rights, and proceeds-of-crime provisions, for instance, neither anticipate nor regulate some of the property claims that are asserted by cultural agents.

In 2010, with ambitions to set a new national benchmark in freedom of information, NSW attempted to legislate in order to achieve consistency and transparency in decision-making about access to court records. The result of substantial reports and studies (NSW Law Reform Commission, 2003; Supreme Court of NSW, 2004; Attorney General’s Department of NSW, 2006, 2008), the Court Information Act aspired to ‘open justice’, which is the belief that accountability and legitimacy can be achieved by creating a public right to scrutinise court proceedings and decisions. The Act was a response to pressure from media organisations. The Act passed through Parliament with cross-party support (NSW Legislative Council, *Parliamentary Debates*, 2010: 22800-4) however it has still not been proclaimed.

Court registrars accused legislators of not addressing the resource burden imposed by the Act’s implementation, and journalists argued that the Act had always harboured parliament’s ill-will towards the media (see, for example, Merritt, 2011). The Act is now stuck in a rare deadlock. Delays in the Act’s commencement have been attributed, by media commentators, to ‘operational practicalities’; the NSW Department of

Attorney General and Justice eventually acknowledged ‘implementation issues’ (Moran, 2011).

The Act recognises that ‘open justice’ needs to be balanced against legitimate reasons for restriction, which might include privacy, personal or sensitive information, improper use, and concerns about material of specific kinds (for instance, video footage, police fact sheets, or malicious pleadings unsupported by admissible evidence). It appreciates that information relating to victims of crime, medical and psychological reports, criminal records, and visual and photographic material, harbours additional dangers.

There is no common law right to access court documents or material in Australia (*R Lucas & Son (Nelson Mail) Ltd v O’Brien*: 305-307, in *Attorney General’s Review*, 2006: 11. See also Spigelman CJ in *John Fairfax Publications Pty Ltd & 2 Ors v Ryde Local Court & 3 Ors* [2005] NSWCA 10, in *Attorney General’s Review*, 2006: 11). Under various legislative provisions, an applicant needs to demonstrate that they have ‘sufficient interest in the proceedings’ (Rule 36.12 of Uniform Civil Procedure Rules 2005, cited in *Attorney General’s Review*, 2006: 13; see also *Australian Conservation Foundation Inc v Commonwealth* (1980) 146 CLR 493), or a ‘proper interest in the proceedings’ (Local Court Criminal Proceedings Rules, cited in *Attorney General’s Review*, 2006: 13), although the range and depth of interest invoked by these provisions is not defined. In the United States, however, there is a presumption of access to all public records, achieved through freedom of information legislation, but drawing upon principles said to pre-date the Constitution and with origins in the English common law (Conley et al., 2011: 772-847, but see also 787, footnote 63, reference to *Zenith Radio*). Whilst a ‘legitimate interest’ in the public record must generally be demonstrated, Conley et al, explain the considerations that might apply where access is limited:

‘safety, stigma, shame, unfair disadvantage, and reputational damage’ (Conley et al, 2011: 826). Where the identity of rape victims is involved, further grounds for restriction might include ‘the negative judgment of their communities, and chilling effects’ (Conley et al., 2011: 825). In the United Kingdom, open justice principles have recently been confronted by proposals to expand the range of processes which allow for secret evidence to be adduced, known as ‘closed material procedures’, taking the extraordinary measures developed in a counter-terrorism context and applying them more broadly in some civil and coronial proceedings (Scott Bray and Martin, 2012).

The Act takes a very limited approach to terms such as ‘private’, ‘personal’ and ‘sensitive’ and has not applied nuanced scholarly attempts to carve out a private realm in public or online spaces (Nissenbaum, 1998, 2004, 2010). In the work of Helen Nissenbaum, for instance, she distinguishes intrusions by certain (usually state) agents from intrusions into private or personal spaces, and also – relevantly – intrusions that arise ‘when the information in question meets societal standards of intimacy, sensitivity or confidentiality’ (Nissenbaum, 2004: 128). By focusing upon the integrity of the information in its own context, Nissenbaum proposes that we can recognise ‘norms of information flow’ within that context (Nissenbaum, 2004: 137), and that privacy violations will occur where contextual informational norms are transgressed (Nissenbaum, 2004: 138).

IV. Proposing a jurisprudence of sensitivity

Whether some of the cultural re-uses of crime’s archive constitute ‘transgressions’ might be resolved by developing a jurisprudence of sensitivity, within a socio-legal discourse of ‘openness’ and ‘secrecy’ (Young, 2011: 57-74). This article calls for

further work in this direction, and itself represents a preliminary setting-out of the issues at stake.

‘Sensitivity’ is a concept recognised by the laws and practices dealing with information management. Where information is stored or governed by public agencies, rules and guidelines attempt to manage the flow of that data: between or within agencies, between agencies and individuals, across borders, or otherwise. In jurisdictions where freedom-of-information functions presumptively, there are limited categories which function as exceptions to this presumption of openness. Whilst terminology varies, in general these exceptions include: privacy, personal information, health records, protected confidences, trade secrets, disclosures against the public interest, or matters of national security. Where an exception applies, the information might not be disclosed, or it might be edited or redacted before disclosure. Usually, where information is disclosed, it must be disclosed unconditionally.

Whilst jurisdictions differ in their rules and their terminology, it is illustrative to see the operation of the concept ‘*sensitive*’ under several Australian legal instruments. For example, the soon-to-commence Australian Privacy Principles retain a distinction between ‘sensitive information’ and ‘personal information’; ‘sensitive information’ is personal information that is *also* information or an opinion about an individual’s: racial or ethnic origin; political opinions; membership of a political association; religious beliefs or affiliations; philosophical beliefs; membership of a professional or trade association; membership of a trade union; sexual preferences or practices (soon to be replaced with ‘sexual orientation or practices’); criminal record; or health information; genetic information; biometric information or biometric templates (Currently *Privacy Act 1998* (Cth), Schedule 3). Under the Australian Government’s *Information Security*

Management Guidelines, information in need of increased security may be subject to dissemination limiting markers (DLM), specifying disclosure restraints or special handling. Five categories of DLM are used: For Official Use Only; Sensitive; Sensitive: Personal; Sensitive: Legal; and Sensitive: Cabinet. Where information is marked ‘Sensitive: Personal’, the definition of ‘sensitive’ aligns with that in the privacy provisions, above (Australian Government, 2011).

In NSW, ‘sensitivity’ operates as a factor when weighing the public interest in the disclosure of health records in the context of health research. For example, information may be ‘of a particularly personal or sensitive nature’ if it involves: children or young people; persons with intellectual or psychiatric disability; persons highly dependent on medical care; persons in dependent or unequal relationships; persons who are members of collectivities; Aboriginal or Torres Strait Islander peoples; persons whose information relates to their mental or sexual health; or persons who are incarcerated (*Health Records and Information Privacy Act 2002* (NSW), Guideline 4.4(d)). Other Australian jurisdictions have similar or analogous provisions, and these are found in instruments governing ‘privacy’ or ‘information privacy’.

It is evident that, whilst the concept of ‘sensitivity’ is recognised by law, it is a limited one and, contrary to ordinary understandings of the word ‘sensitive’, it attempts to be sensitive only to considerations within a limited list. I propose that a jurisprudence of sensitivity places pressure upon the existing legal concept of ‘sensitivity’ in order to bring it within the broader ambit of a sensory jurisprudence; that is, a jurisprudence connected with the senses, perceptible by the senses, endowed with the faculty of sensation; a jurisprudence that feels quickly and acutely. Listing what is ‘sensitive’ is an intellectual undertaking; recognising what is ‘sensitive’ demands *feeling something*. A

jurisprudence of sensitivity recognises sensibilities, emotions and harm. It acknowledges the special susceptibility of some individuals, especially those whose context or experience makes them vulnerable in some circumstances. It recognises that certain materials require special care, delicate handling, tact (derived in part from *Oxford English Dictionary*, 2000 -).

Both legal and cultural enterprises are capable of sensitivity, and this capacity offers a pathway through the potentially dangerous or harmful space in which criminal evidence continues to survive after the expiry of its probative value. Sensitivity offers an alternative to the underlying binaries at stake here – open/closed, public/private, transparency/secretcy – which, when pressed, turn out to be pointless or false. Criminology could achieve a timely intervention into a dialogue that has begun within cultural and political theory, following Clare Birchall’s position that ‘secretcy *or* transparency?’ is a false choice (Birchall, 2011a), and that we live with the tensions and contradictions between these positions (Birchall, 2011b). Better ways of protecting what is important to us might be achieved through acts of sensitivity. By way of example, Desmond Manderson – who uses the term ‘judgment’ to capture a part of what I propose with the term ‘sensitivity’ – explores the literary and rhetorical moves by which ‘judgment’ is reached when there is no ‘right answer’ (Manderson, 2010: 496). For Manderson, justice is not found in the judgment *as decision* but in the doubt and challenge from which it resulted: *the process*. But Manderson identifies the significance of ‘justification, reason-giving, and resistance’ as characterising the process of judgment, and he opposes the view of judgment as ‘closure and finality’ (Manderson, 2010: 513). By focusing here upon the process of judgment that lies behind the cultural re-use of criminal evidence, we confront the decision made by the cultural user about

what they've chosen to show, but we don't necessarily understand their process of judgment. We cannot know much about their sensitivities or susceptibilities; we only know how their work makes us feel. And so, often instinctively, we pass judgment upon them: *what kind of person would show this?*

In judging Henry Bond, this process of judging might be assisted by some sensitivity to what Bond chose to conceal. Returning to his example of the woman murdered on the train, it is important to understand what Bond might easily have learned and revealed about that case, but didn't. The rape and murder of Patricia W. on a Friday evening in September 1965 acquired the media label 'The Gatwick Train Murder'.¹ She was a 28-year-old trainee schoolteacher who had been reading a book when Michael Gills interrupted her with his sexual advance: "What about it?" She rebuffed him, and he stabbed her repeatedly to death, sexually assaulted her, cut her throat, then left her body in a degrading state of exposure. Police with tracker dogs searched the line and conducted house-to-house enquiries (see for example: JISC Media Hub, 6 Sept 1965, 18). They found the contents of her handbag at Three Bridges, but her killer was not identified until 10 months later when Gills, in prison for another offence, confessed to the crime. He was convicted of manslaughter on the grounds of diminished responsibility and sentenced to 15 years in prison, of which he served 11, before his release in 1977. In his police record of interview in 1966, Gills had said, 'She snubbed me. [...] Women treated me like a leper. All the hate and resentment I had for women came into my head. I stabbed her' (see, for instance, contemporaneous media report at JISC Media Hub, 1 Aug 1966, 14. See also Pulp International, 2010).

¹ Some jurisdictions have rules against disclosing the name or identity of a sexual assault victim or complainant. Whilst Patricia W's full name was published in the media at the time of her rape and murder, I have not done so here.

Following his release Gills, then known as ‘Steve’ or ‘Stephen’, worked as an animal wrangler or ‘beastman’ in the Chipperfield Circus. In 1997 the circus was infiltrated by undercover animal welfare activists from the organisation Animal Defenders who, over a period of four months, secretly filmed over 400 hours of video footage. Much of this footage showed Gills committing acts of cruelty upon animals – a baby chimpanzee, a camel, a sick elephant, among others. Gills admitted his guilt against six charges of cruelty to four elephants, and he was convicted. In separate proceedings his two employers denied their charges, and experts including Dame Jane Goodall were called by prosecutors to testify about what they saw in the footage: gratuitous violence, and inexcusable despair and terror that Gills and his accomplices had perpetrated upon the animals (BBC, 1999). Gills had beaten an elephant so hard with a metal bar that the bar broke. One of the undercover workers told a reporter, ‘He even boasted to me about the best place to hit [an elephant] for maximum impact’ (Pisa, 1999). Footage showed Gills hit an elephant 12 times with a metal bar, shouting ‘You’ll never learn’. Another report said that, after chasing an elephant around a small cage, Gills shouted, ‘I don’t f***ing listen to you. F***ing c***, you’re going to get it right across the f***ing earhole’ (Armstrong, 1998, expurgation in original). Elsewhere, he was shown hitting elephants with a broom, shovel and pitchfork (Carter, 1999). He was also shown hitting a chicken’s head against a wall (Watson-Smyth, 1999). The director of Animal Defenders, Jan Creamer, told the BBC: ‘Steve Gills said it was because he was depressed and he took it out on the animals’ (Storer, 2002). Gills was sentenced to four months in prison for animal cruelty. In yet another bewildering twist, in 2007 a newspaper reported that Gills, by then a pensioner, had been assaulted by a group of youths after his ex-girlfriend had spread rumours that he was a convicted paedophile.

He told reporters, ‘I pass people in the street and they look at me as though I’m a bit of dirt. They all turn around and stare’ (Crawley Observer, 2007).

And so, whilst the criminal evidence adduced against Michael Gills for the rape and killing of Patricia W. *did* lead a cultural afterlife, Henry Bond’s project missed it altogether. Whereas Bond’s mission took him into the criminal archive, immersed him in cultural and psychoanalytic theories, giving it the kind of genre-slashing quirks that might attract the MIT Press, a far more substantial, horrifying and perverse story could have been gleaned from the prosaic news archive. It isn’t that Bond’s cultural re-working of criminal evidence cannot be done; it’s that his work ought to be sensitive to – and judged against – what would have been better.

It is not only a legally-oriented perspective on criminal evidence that feels troubled by post-trial uses of crime’s archive. This is a debate within the creative arts as well. David Campany, a photographer and scholar, has urged that engagement with this sort of artwork ought to establish a nuanced critical standard, one which recognises that photographic use, re-use and mis-use has always been a source of anxiety: ‘rather than collapsing into an easy relativism in which any reading is as good as any other there is an understanding that a reflexive knowledge demands we include the archival within the frame rather than leaving it outside’ (Campany, 2003).

Thinking sensitively might offer a promising way through the darker territory in which criminal evidence sometimes dwells after the conclusion of proceedings. Establishing a conceptual and ethical practice that recognises sensitivity gives crimino-legal scholars critical tools for responding to this cultural work. Rather than excluding the work altogether – as not art, or unfit for display – a better dialogue might emerge from the

place where our fascinations co-exist. Criminal conduct, and its investigation and proof, have long been viewed through a cultural lens, and this lens can reflect back upon evidentiary doctrine. Cultural interventions upon criminal evidence help us understand how the rules of admissibility, exceptions, prohibitions and protections – collectively – represent sites of sensitivity and confidence within legal discourse. A legal rule-bound approach to evidence closely guards concepts such as ‘relevance’, ‘reliability’, ‘first-hand’, ‘remote’, ‘prejudice’, ‘unfair’, ‘improper’, ‘danger’, the distinction between ‘fact’ and ‘opinion’, the distinction between a ‘tendency’ and a ‘coincidence’, the distinction between ‘testimony’ and the ‘credibility’ of the witness who gives it, and the special status of the criminal accused. Further, the law creates separate rules for evidence in the form of a ‘witness’, a ‘document’, or a ‘real’ evidence. These are categories that do not survive as distinct within the cultural field, and so law’s distinctions demand scrutiny. Approaching these concepts culturally might disclose how narrow and contested are law’s fact-finding processes, and how vulnerable these might be when situated outside the protective ambit of evidentiary rules.

A cultural framework reminds the evidence scholar that, whereas questions of admissibility are determined on an in/out basis – evidence is admissible or it is excluded – more troubling and fascinating are the processes of reasoning *with* evidence.

Following the interventions into the field made by William Twining, who cautioned against a focus on rules and urged an examination of the spaces *between* fact and value, fact and law, reason and intuition (Twining, 2006: 7), we can also see the potential for cultural perspectives to assist us in remaining sensitive to the ways we attribute worth or weight to evidence. It is at this level of evidentiary discourse that a cultural lens might focus; here is where decision-making is most fragile and uncertain, where the processes

behind judgment reside and are concealed. Cultural engagement with criminal evidence discloses new ways of seeing what criminal evidence *is*, but more so our sensitivities to *what it does*. And crucially, it reminds us that we can be judged by *what we do with it*.

References

A. Articles, books and reports

Anita & Beyond (2003) exhibition catalogue, 1 March – 27 April 2003, Penrith Regional Gallery & The Lewers Bequest.

Armstrong, Jeremy (1998) '32 Years ago, he butchered a woman on a train. Now he takes it out on animals', *Daily Mirror*, 14 February 1998.

Artlink (1999) 19(1) 'Mining the Archive', special issue, ed. Zara Stanhope.

Atkinson, A (2010) 'Words: A performance in analysis. Lacan at the Scene by Henry Bond', *M/C Reviews*, Wednesday, February 03, 2010. <http://reviews.media-culture.org.au/modules.php?name=News&file=article&sid=3593>

Attorney General's Department of NSW (2006) *Review of the Policy on Access to Court Information*, April 2006.

Attorney General's Department of NSW (2008) *Report on Access to Court Information*, June 2008.

Australian Government (2011) *Information Security Management Guidelines*, 19 July 2011.

<http://www.protectivesecurity.gov.au/informationsecurity/Documents/Australian%20Government%20classification%20system.pdf>

BBC, (1999) 'UK Circus trainer condemned by experts', *British Broadcasting Corporation*, January 21, 1999, http://news.bbc.co.uk/2/hi/uk_news/260062.stm

Bennington, G (2011) 'Kant's Open Secret', *Theory, Culture & Society*, 28 (7-8), 2011, 26-40.

Biber, Katherine (2006a) 'Photographs and Labels: Against a Criminology of Innocence', *Law Text Culture*, 10, 18-40.

Biber, Katherine (2006b) 'Review of Peter Doyle's City of Shadows' [exhibition review], *History Australia* 3 (2) 2006, 55.1-55.2.

- Biber, Katherine (2007) *Captive Images: Race, Crime, Photography*, Abingdon: Routledge-Cavendish.
- Biber, Katherine (2009a) 'Bad Holocaust Art', *Law Text Culture* 13, 2009, 227.
- Biber, Katherine (2009b) 'Open Justice vs Secret Evidence', *ABC Radio National*, 'The Law Report', first broadcast 17 March 2009.
- Biber, Katherine and Derek Dalton, (2009c) 'Making Art from Evidence: Secret sex and police surveillance in the Tearoom', *Crime Media Culture*, 2009, vol 5 (3), 243-267.
- Biber, Katherine (2010) 'Neurotic, Perverse and Psychotic: Lacan at the Scene' [book review], *Source: The Photographic Review*, 62: 64.
- Biber, Katherine (2011a) 'Evidence from the Archive: Implementing the Court Information Act in NSW', *Sydney Law Review*, 33 (2): 575-598.
- Biber, Katherine (2011b) 'Crooks Like Us' [book review], *Current Issues in Criminal Justice*, 23 (2), 287-290.
- Biber, Katherine (2011c) 'Wanted: The Outlaw in American Visual Culture; Capturing the Criminal Image: From Mug Shot to Surveillance Society; Pictures from a Drawer: Prison and the Art of Portraiture' [book reviews], *History of Photography* 35 (4): 439-441.
- Birchall, Clare (2011a) 'There's been too much secrecy in this city: The False Choice between Secrecy and Transparency in U.S. Politics', *Cultural Politics* 7 (1) 2011, 133-156.
- Birchall, Clare (2011b) 'Introduction to 'Secrecy and Transparency: The Politics of Opacity and Openness'', *Theory, Culture & Society*, 28 (7-8), 2011, 7-25.
- Birmingham, John (2012) 'Cullen's art haunted by monsters', *Brisbane Times*, July 30 2012. <http://www.smh.com.au/opinion/blogs/blunt-instrument/cullens-art-haunted-by-monsters-20120730-238zp.html>
- Bond, Henry(2009) *Lacan at the Scene*, Cambridge, Mass.: MIT Press
- Brisolin, Viola (2011) 'Lacan at the Scene by Henry Bond' [review], *European Legacy*, 2011, 671-672.
- Buchloh, Benjamin H.D. (1999) 'Gerhard Richter's "Atlas": The Anomic Archive', *October*, 88 (Spring), 117-145.
- Campany, David (2003) 'Colorless Green Ideas Sleep Furiously: Photography and the syntax of the archive', *Source: The Photographic Review*, 36 (Autumn).

http://www.source.ie/archive/issue36/is36feature_David_Campany_06_57_19_26-02-12.php>

Carrabine, Eamonn (2012) 'Just Images: Aesthetics, Ethics and Visual Criminology', *British Journal of Criminology*, 52: 463-489.

Carter, Helen (1999) 'Circus trainer guilty of cruelty to chimpanzee', *Guardian*, Thursday 28 January 1999. <http://www.guardian.co.uk/uk/1999/jan/28/helencarter>

Conley, Amanda et al (2011-2012) 'Sustaining Privacy and Open Justice in the Transition to Online Court Records: A multidisciplinary inquiry', *Maryland Law Review*, 71: 772-847.

Crawley Observer (2007) 'I want my life back', 16 July 2007.

<http://www.crawleyobserver.co.uk/news/local/i-want-my-life-back-1-976252>

Crerar, Simon (2012) 'Mugshot Doppelgängers mashes-up fallen Hollywood stars with 1920s Sydney crims', *News Limited Network*, September 14, 2012.

Cusick, James (1994) 'BT disowns James Bulger pictures: Parents of murdered child 'appalled and upset' by images at a London art exhibition sponsored by telecoms company', *The Independent*, 26 May 1994. <http://www.independent.co.uk/news/uk/bt-disowns-james-bulger-pictures-parents-of-murdered-child-appalled-and-upset-by-images-at-a-london-art-exhibition-sponsored-by-telecoms-company-james-cusick-reports-1438579.html>

Derrida, Jacques (1995) *Archive Fever: A Freudian Impression*, Chicago, University of Chicago Press.

Doyle, Peter (2005) *City of Shadows: Sydney Police Photographs 1912-1948*, Sydney, Historic Houses Trust.

Doyle, Peter (2009) *Crooks Like Us*, Sydney, Historic Houses Trust.

Enwezor, Okwui (2008) *Archive Fever: Uses of the Document in Contemporary Art*, International Center of Photography & Steidl.

Foster, Hal (2004) 'An Archival Impulse', *October*, 110: 3-22.

Hanrahan, Siún (1999) 'Bearing Witness', *Source: The Photographic Review*, 18 (Spring).

http://www.source.ie/archive/issue18/is18feature_Siun_Hanrahan_09_08_59_20-02-12.php

Hewitson, Owen (2011) 'Lacan at the Scene' [review], *Psychoanalysis, Culture & Society*, 16: (1): 109-111.

Hood, C. (2006) 'Transparency in Historical Perspective', in C. Hood and D. Heald, eds., *Transparency: The Key to Better Governance?* 3-23. Oxford: Oxford University Press.

Hourigan, Daniel (2010) 'Review – Lacan at the Scene', *Metapsychology Online Reviews*, 14 (9)
http://metapsychology.mentalhelp.net/poc/view_doc.php?type=book&id=5417&cn=166

Jackson, Bruce (2009) *Pictures from a Drawer: Prison and the Art of Portraiture*, Philadelphia: Temple University Press.

Jay, Martin (1993) *Downcast Eyes: The denigration of vision in twentieth-century French thought*, California: California University Press.

JISC Media Hub, 6 Sept 1965, 18
http://jiscmediahub.ac.uk/mediaContent/open/scripts/1965/19650906_LE_01_ITV.pdf

JISC Media Hub, 1 Aug 1966, 14
http://jiscmediahub.ac.uk/mediaContent/open/scripts/1966/19660801_LE_01_ITV.pdf

Kinsman, Margaret (2010) 'The lure of the crime scene. Lacan at the Scene, Henry Bond' [review], *Philosophy of Photography*, 1 (1): 116.

Kramer, H (2002) 'Jewish Museum Show Full of Vile Crap, Not to be Forgiven', *New York Observer*, 1 April 2002.

Kumar, Miiko (2011) 'Secret Witnesses, Secret Information and Secret Evidence: Australia's Response to Terrorism', *Mississippi Law Journal*, 80(4), 1371-1394.

McGrath, John E (2004) *Loving Big Brother: Performance, Privacy and Surveillance Space*, London: Routledge.

Maley, Jacqueline (2007) 'Fashion heads tip their hats to rogues gallery', *Sydney Morning Herald*, 28 February 2007.

Manderson, D (2010) 'Judgment in law and the humanities', in A. Sarat, et al, eds., *Law and the Humanities: An Introduction*, Cambridge: Cambridge University Press.

Merritt, Chris (2011) 'Open justice finds a new champion', *The Australian*, 11 November 2011.

Moran, Susannah (2011) 'Court information act verges on farce as horse chases the cart', *The Australian*, 4 November 2011.

Nissenbaum, Helen (1998) 'Protecting Privacy in an Information Age: The Problem of Privacy in Public', *Law and Philosophy*, 17: 559-596.

Nissenbaum, Helen (2004) 'Privacy as Contextual Integrity', *Washington Law Review* 79 (1).

Nissenbaum, Helen, (2010) [*Privacy in Context: Technology, Policy, and the Integrity of Social Life*](#), Palo Alto CA: Stanford University Press.

NSW Law Reform Commission (2003) *Contempt by Publication*, Report No 100.

NSW Legislative Council (2010) *Parliamentary Debates*, 18 May 2010, 22800-4.

Oxford English Dictionary (2000-), online edition, Oxford: Oxford University Press.

Photofile, (2005) 78, a special issue on the archive.

Pisa, Nick (1999) 'Lovers ruse trapped animal beater Mary', *Sunday Mirror* 31 January 1999.

Pulp International (2010)

<http://www.pulpinternational.com/pulp/keyword/Gatwick.html>

Safe, Georgina (2011) 'Catwalk criminals as sharp as a razor', *Sydney Morning Herald*, 30 November 2011.

Sante, Luc (1992) *Evidence*, New York: Farrar Straus and Giroux.

Sante, Luc (2003) *Low Life: Lures and Snares of Old New York*, New York: Farrar Straus and Giroux.

Schaffner, I. & Winzen, M. (eds), (1998) *Deep Storage: Collecting, Storing and Archiving in Art*, New York: Prestel.

Schjeldahl, Peter (2002) 'The Hitler Show: The Jewish Museum revisits the Nazis', *The New Yorker* 1 April 2002.

Scott Bray, Rebecca (2007) 'En Piel Ajena: The Work of Teresa Margolles', *Law Text Culture*, 11: 13–50.

Scott Bray, Rebecca (2011) 'Teresa Margolles' Crime Scene Aesthetics', *South Atlantic Quarterly*, 110(4): 933-948.

Scott Bray, Rebecca and Martin, Greg (2012) 'Closing down open justice in the United Kingdom', *Alternative Law Journal* 37 (2), 126-127.

Sedgwick, Eve Kosofsky (1993) 'Epistemology of the Closet', in H, Abelove, et al, eds., *The Lesbian and Gay Studies Reader*, New York: Routledge.

Source: The Photographic Review (2012) 70 (Spring), a special issue on the archive.

- Spieker, S. (2008) *The Big Archive: Art from bureaucracy*, Cambridge MA: MIT Press.
- Stanhope, Zara (1999) 'The mirror in the Archive box', editorial for *Artlink*, 19(1): 8-9.
- Stoler, Ann Laura (2002) 'Colonial Archives and the Arts of Governance', *Archival Science*, 2: 87-109.
- Storer, Jackie (2002) 'Exposing circus cruelty', Monday, 2 September, 2002.
http://news.bbc.co.uk/2/hi/uk_news/politics/2230913.stm
- Supreme Court of NSW (2004) *Non-Party Access to Court Records* discussion paper, 22 April 2004.
- Twining, William (2006) *Rethinking Evidence*, (2nd ed), Cambridge: Cambridge University Press.
- Watson-Smyth, Kate (1999) 'Mary Chipperfield beat young chimpanzee until it screamed', *Independent*, 20 January 1999. <http://www.independent.co.uk/news/mary-chipperfield-beat-young-chimpanzee-until-it-screamed-1075005.html>
- Whitelaw, Mitchell (2011) 'Generous Interfaces' (NDF 2011 keynote), *The Visible Archive*. <http://visiblearchive.blogspot.com.au/2011/12/generous-interfaces-ndf-2011-keynote.html>
- Young, Alison (2011) 'The Art of Public Secrecy', *Australian Feminist Law Journal*, 35: 57-74.

B. *Artistic and creative work and exhibitions*

- Anita & Beyond* (2003) 1 March – 27 April 2003, Penrith Regional Gallery, NSW, Australia [exhibition]
- Barnes, Richard (1998) *Unabomber* [artwork]
- Botz, Corinne May (2004) *The Nutshell Studies of Unexplained Death*
http://www.corinnebotz.com/Corinne_May_Botz/Nutshell_Studies.html
- City of Shadows* (2006) Sydney Justice & Police Museum [exhibition]
- Crimes of Passion* (2002-2003) Sydney Justice & Police Museum [exhibition]
- Eva Frapiccini (2003-2006) *Muri di piombo* [artwork]
- Gibson, Ross and Richards, Kate (1998-) *Life After Wartime* [artwork series]
<http://www.liferafterwartime.com/html-content.html>
- Jones, William E (1962/2007) *Tearoom* [artwork]

Luster, Deborah (2010) *Tooth for an Eye* [artwork]

Margolles Teresa (2009) *¿De qué otra cosa podríamos hablar?/What Else Could We Talk About?* [artwork]

Patterson, Christian (2011) *Redheaded Peckerwood*, MACK [photobook]

Sachs, Tom (1998) *Giftgas Giftset* [artwork]

Sachs, Tom (1998) *Prada Deathcamp* [artwork]

Schechner, Alan (1993) *It's the Real Thing – Self-Portrait at Buchenwald* [artwork]

Simon, Taryn (2003) *The Innocents* [artwork series]

Strassheim, Angela (2009) *Evidence* [artwork]

Wagg Jamie (2003) 'History Painting', *Shopping Mall 15:42:32, 12/02/93* (1993-4) and 'History Painting', *Railway Line (1993-94)* [artworks]

Wortendyke, Krista (2010-2011) *Killing Season: Chicago* [artwork]